

SECOND REGULAR SESSION

[P E R F E C T E D]

SENATE BILL NO. 1028

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR CAUTHORN.

Read 1st time January 12, 2004, and ordered printed.

Read 2nd time January 20, 2004, and referred to the Committee on Governmental Accountability and Fiscal Oversight.

Reported from the Committee February 2, 2004, with recommendation that the bill do pass and be placed on the Consent Calendar.

Taken up February 9, 2004. Read 3rd time and placed upon its final passage; bill passed.

3707S.01P

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 34.010, 34.031, 34.032, 34.040, 34.065, and 34.130, RSMo, and to enact in lieu thereof four new sections relating to state purchasing.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 34.010, 34.031, 34.032, 34.040, 34.065, and 34.130, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 34.010, 34.031, 34.032, and 34.040, to read as follows:

34.010. 1. The term "department" as used in this chapter shall be deemed to mean department, office, board, commission, bureau, institution, or any other agency of the state, except the legislative and judicial departments.

2. The term "negotiation" as used in this chapter means the process of selecting a contractor by the competitive methods described in this chapter, whereby the commissioner of administration can establish any and all terms and conditions of a procurement contract by discussion with one or more prospective contractors.

3. The term "purchase" as used in this chapter shall include the rental or leasing of any equipment, articles or things.

4. The term "supplies" used in this chapter shall be deemed to mean supplies, materials, equipment, contractual services and any and all articles or things, except for utility services regulated under chapter 393, RSMo, or as in this chapter otherwise provided.

5. The term "reverse auction" used in this chapter shall mean a procurement method wherein bidders are invited to bid on specified goods or nonprofessional

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.

34.031. 1. The commissioner of administration, in consultation with the environmental improvement and energy resources authority of the department of natural resources, shall give full consideration to the purchase of products made from materials recovered from solid waste and to the reduction and ultimate elimination of purchases of products manufactured in whole or in part of thermoformed or other extruded polystyrene foam manufactured using any fully halogenated chlorofluorocarbon (CFC). Products that utilize recovered materials of a price and quality comparable to products made from virgin materials shall be sought and purchased, with particular emphasis on recycled oil, retread tires, compost materials and recycled paper products. The commissioner shall exercise a preference for such products if their use is technically feasible and, where a bid is required, their price is equal to, or less than, the price of items which are manufactured or produced from virgin materials. Products that would be inferior, violate safety standards or violate product warranties if the provisions of this section are followed may be excluded from the provisions of this section.

2. The commissioner of administration shall:

(1) Review the procurement specifications in order to eliminate discrimination against the procurement of recycled products;

(2) Review and modify the contract specifications for paper products and increase the minimum required percentage of recycled paper in each product as follows:

(a) Forty percent recovered materials for newsprint;

(b) Eighty percent recovered materials for paperboard;

(c) Fifty percent waste paper in high grade printing and writing paper;

(d) Five to forty percent in tissue products;

(3) Support federal incentives and policy guidelines designed to promote these goals;

(4) Develop and implement a cooperative procurement policy to facilitate bulk order purchases and to increase availability of recycled products. The policy shall be distributed to all state agencies and shall be made available to political subdivisions of the state[;

(5) Conduct a survey using existing staff of those items customarily required by the state that are manufactured in whole or part from polystyrene plastic, and report its findings, together with an analysis of environmentally acceptable alternatives thereto, prepared in collaboration with the department of natural resources, to the general assembly and every state agency within six months of August 28, 1995].

3. Notwithstanding the provisions of this section, no state agency may purchase any food or beverage containers or wrapping manufactured from any polystyrene foam

manufactured using any fully halogenated chlorofluorocarbon (CFC) found by the United States Environmental Protection Agency (EPA) to be an ozone-depleting chemical.

4. No state agency may purchase any items made in whole or part of thermoformed or other extruded polystyrene foam manufactured using any fully halogenated chlorofluorocarbon (CFC) found by the United States Environmental Protection Agency (EPA) to be an ozone-depleting chemical without approval from the commissioner of administration. Approval shall not be granted unless the purchasing agency demonstrates to the satisfaction of the director of the department of natural resources and the commissioner that there is no environmentally more acceptable alternatives or the quality of such alternatives is not adequate for the purpose intended.

5. For each paper product type and corresponding recycled paper content standard pursuant to subdivision (2) of subsection 2 of this section, attainment goals for the percentage of paper products to be purchased that utilize post-consumer recovered materials shall be[

- (1) Ten percent in 1991 and 1992;
- (2) Twenty-five percent in 1993 and 1994;
- (3) Forty percent in 1995; and
- (4)] sixty percent by 2000.

6. In the review of capital improvement projects for buildings and facilities of state government, the commissioner of administration shall direct the division of design and construction to give full consideration to alternatives which use solid waste, as defined in section 260.200, RSMo, as a fuel for energy production or which use products composed of materials recovered from solid waste.

7. The commissioner of administration, in consultation with the environmental improvement and energy resources authority of the department of natural resources, shall prepare and provide by January first of each year an annual report summarizing past activities and accomplishments of the program and proposed goals of the program including projections for each affected agency. The report shall also include a list of products utilizing recovered materials that could substitute for products currently purchased and a schedule of amounts purchased of products utilizing recovered materials compared to purchases of similar products utilizing virgin materials for the period covered by the annual report.

8. The office of administration, department of natural resources and department of economic development shall cooperate jointly and share to the greatest extent possible, information and other resources to promote:

- (1) Producers or potential producers of secondary material goods to expand or develop their product lines;
- (2) Increased demand for secondary materials recovered in Missouri; and
- (3) Increased demand by state government for products which contain secondary materials recovered in Missouri.

9. The commissioner of administration may increase minimum recycled content percentages for paper products, minimum recycled content percentages for other recycled products and establish minimum post-consumer content as such products become available. The preference provided in subsection 1 of this section shall apply to the minimum standards established by the commissioner.

34.032. 1. The provisions of section 34.040 to the contrary notwithstanding, each department and agency of the state government, including the general assembly, shall purchase, in the manner provided by law, and use recycled paper when recycled paper can be obtained that is comparable to the quality presently used by the department or agency and if the price is competitive. [For the purposes of this section, "competitive" means a price within ten percent of the price of items which are manufactured or produced from virgin materials.] Attainment goals for the percentage of paper products to be purchased that utilize post-consumer recovered materials shall be[:

- (1) Ten percent in 1991 and 1992;
- (2) Twenty-five percent in 1993 and 1994;
- (3) Forty percent in 1995; and
- (4)] sixty percent by 2000.

2. Each department and agency of state government shall also purchase a minimum of fifteen percent recycled motor oil for use in motor vehicles.

3. Each department and agency of state government shall cause to be recycled:

- (1) A minimum of twenty-five percent of paper products used or fifty percent of the paper disposed of, whichever is greater;
- (2) Seventy-five percent of all used motor oil.

4. Each department and state agency shall, to the maximum extent practicable, separate plastics, paper, metals and other recyclable items [by July 1, 1990].

5. [By January 1, 1990,] Each department and state agency shall develop, in cooperation with the office of administration, and implement a policy for recycling and waste reduction. Each department and agency shall collect and recycle waste paper and empty aluminum beverage containers generated by employee activity. The office of the governor and the general assembly shall implement a policy for recycling and waste reduction and shall collect and recycle waste paper and aluminum beverage containers generated within its facilities. Recycling programs for agency offices located outside of the city of Jefferson may be coordinated through the office of administration or operated locally provided that the office of administration reviews and approves such programs. Proceeds from the sale of recycled materials may be used to offset costs of the recycling program. Any moneys found by the office of administration to be in excess of costs incurred shall be transferred to the department of social services to be used by the heating assistance program pursuant to sections 660.100 to 660.135, RSMo.

6. The department of higher education, in cooperation with the office of administration and state colleges and universities, shall develop and distribute guidelines for waste reduction and the collection of recyclable materials generated in classrooms, administrative offices, dormitories, cafeterias and similar campus locations.

7. Bid specifications for solid waste management services issued by any department or agency of state government shall be designed to meet the objectives of sections 260.255 to 260.325, RSMo, encourage small businesses to engage and compete in the delivery of waste management services and to minimize the long run cost of managing solid waste. Bid specifications shall enumerate the minimum components and minimum quantities of waste products which shall be recycled by the successful bidder. Bids for solid waste management services to state departments and agencies located within the seat of government shall be issued in units in order to maximize opportunities for small business to provide solid waste management services to the state. Each department and agency shall designate one person in an existing position to serve as a solid waste management coordinator to ensure that the agency and the office of administration cooperate to meet the requirements of this section.

34.040. 1. All purchases in excess of [three] **five** thousand dollars shall be based on competitive bids, except as otherwise provided in this chapter.

2. On any purchase where the estimated expenditure shall be twenty-five thousand dollars or over, except as provided in subsection 5 of this section, the commissioner of administration shall:

(1) Advertise for bids in at least two daily newspapers of general circulation in such places as are most likely to reach prospective bidders and may advertise in at least two weekly minority newspapers and may provide such information through an electronic medium available to the general public at least five days before bids for such purchases are to be opened. Other methods of advertisement, which may include minority business purchase councils, however, may be adopted by the commissioner of administration when such other methods are deemed more advantageous for the supplies to be purchased;

(2) Post a notice of the proposed purchase in his or her office; and

(3) Solicit bids by mail or other reasonable method generally available to the public from prospective suppliers. All bids for such supplies shall be mailed or delivered to the office of the commissioner of administration so as to reach such office before the time set for opening bids.

3. The contract shall be let to the lowest and best bidder. The commissioner of administration shall have the right to reject any or all bids and advertise for new bids, or purchase the required supplies on the open market if they can be so purchased at a better price. When bids received pursuant to this section are unreasonable or unacceptable as to terms and conditions, noncompetitive, or the low bid exceeds available funds and it is determined in writing by the commissioner of administration that time or other

circumstances will not permit the delay required to resolicit competitive bids, a contract may be negotiated pursuant to this section, provided that each responsible bidder who submitted such bid under the original solicitation is notified of the determination and is given a reasonable opportunity to modify their bid and submit a best and final bid to the state. In cases where the bids received are noncompetitive or the low bid exceeds available funds, the negotiated price shall be lower than the lowest rejected bid of any responsible bidder under the original solicitation.

4. All bids shall be based on standard specifications wherever such specifications have been approved by the commissioner of administration. The commissioner of administration shall make rules governing the delivery, inspection, storage and distribution of all supplies so purchased and governing the manner in which all claims for supplies delivered shall be submitted, examined, approved and paid. The commissioner shall determine the amount of bond or deposit and the character thereof which shall accompany bids or contracts.

5. The department of natural resources may, without the approval of the commissioner of administration required pursuant to this section, enter into contracts of up to five hundred thousand dollars to abate illegal waste tire sites pursuant to section 260.276, RSMo, when the director of the department determines that urgent action is needed to protect public health, safety, natural resources or the environment. The department shall follow bidding procedures pursuant to this section and may promulgate rules necessary to establish such procedures. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

6. The commissioner of administration and other agencies to which the state purchasing law applies shall not contract for goods or services with a vendor if the vendor or an affiliate of the vendor makes sales at retail of tangible personal property or for the purpose of storage, use, or consumption in this state but fails to collect and properly pay the tax as provided in chapter 144, RSMo. For the purposes of this section, "affiliate of the vendor" shall mean any person or entity that is controlled by or is under common control with the vendor, whether through stock ownership or otherwise.

7. The commissioner of administration may authorize the use of the reverse auction procurement method to procure goods or nonprofessional services if the commissioner believes the use of the reverse procurement method will result in savings to the state. The office of administration shall promulgate rules regarding

the handling of the reverse auction process.

[34.065. Where, because of the large number of possible bidders for a particular purchase, it is impractical to submit a request for a bid to all possible bidders each time a bid is requested, request shall be made in rotation pursuant to the regulation of the commissioner of administration so as ultimately to include all the possible bidders, except that recognized competitive bidders shall be solicited in each instance.]

[34.130. On or before May first of each year, each department shall submit to the commissioner of administration a classified list of its estimated needs for supplies for the following fiscal year. The commissioner of administration shall consolidate these and may purchase the entire amount or such part thereof at one time as he shall deem best. Any contract for such purchases may provide only the price at which the supplies needed during the year shall be purchased and that the supplies shall be delivered in such amounts and at such times as ordered throughout the year and be paid for at such time and for such amounts as delivered. In such case, certification from the commissioner of administration and the auditor shall be required only for the amount ordered at any time.]

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